IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

NOTICE OF MOTION NO.4517 OF 2007
IN
SUIT NO.3040 OF 2007

Basant Vikas Developers ..Plaintiff.
Vs.
Mahendra Amardas Wig and others ..Defendants.

.....

Mr. Sanjay Jain i/b L.J. Law for the Plaintiff.
Mr. B.B. Gupta for the Defendants.

....

CORAM: **DR. D.Y. CHANDRACHUD, J.**

11th December, 2007.

P.C. :

1. By consent, the Notice of Motion has been taken up for hearing and final disposal.

2. This order will dispose of a Notice of Motion taken out by the Plaintiff in a suit for specific performance. The property in dispute is more particularly described in Exhibit A to the plaint and comprised of land admeasuring 2039.28 sq. mtrs. bearing CTS 433/3A at Deonar. The case of the Plaintiff is that a meeting was held between the parties on 12th October, 2006 at which the Plaintiff agreed to purchase the property from the Defendants at and for a consideration of Rs.2.10 Crores. Now admittedly, there is

no formal document recording the terms of the transaction more particularly the alleged total consideration of Rs.2.10 Crores and no agreement to sell was entered into between the parties. The Suit has been instituted on the basis of a Debit voucher dated 12th October, 2006 (Exhibit C) which records the deposit of an amount of Rs.21 lacs towards the purchase of plot No.433/3A part. A cheque in the amount of Rs.21 lacs was furnished by the Plaintiff to the Defendants. Counsel appearing for the Plaintiff submitted fairly that though the document dos not contain any reference to the agreed consideration, the case of the Plaintiff is that there was an oral agreement under which an amount of Rs.2.10 Crores was determined as the price payable.

3. The Defendants have in the affidavit in reply filed to the Notice of Motion contended that there were indeed negotiations between the parties, but no final agreement was arrived at. The case of the Defendants is that on 12th October, 2006, a meeting took place during the course of which a deposit of Rs.21 lacs was paid by the Plaintiff and that the initials of the First Defendant were taken on a blank voucher. According to the First Defendant, the voucher was subsequently filled up by the Plaintiff.

4. At this stage, prima facie some indication of the status of the negotiations between the parties would emerge from the first letter that was addressed by the Plaintiff to the Defendants on 14th June, 2007. The relevant part of the letter would read as follows :

> "2. Following the negotiations with you for acquiring the aforesaid property for a consideration, we had given you a sum of Rs.21,00,000/- (rupees twenty one lacs only) vide cheque no.454001 dated 12.10.06 drawn on Syndicate Bank (Santacruz Branch) as advance / deposit towards consideration for acquiring the aforesaid property from you.
>
> 3. At the time of receiving the aforesaid advance you promised to arrange to give vacant and peaceful possession of the said property within 6 months on execution of proper documentation.
>
> 4. Since then 8 months have passed but we have not heard a word from you nor have we observed any positive efforts on your part to fulfill your obligation of handing over vacant possession of the aforesaid property.
>
> 5. We therefore notify you to inform us as to the progress in the matter and also let us know as to when you can give us the vacant property.
>
> 6. We expect a reply showing your positive attitude and efforts in giving us the vacant possession of the property, failing which we shall be compelled to take legal action."

5. Prima facie, the first important aspect of this letter is that it is completely silent in regard to the total agreed consideration. In

fact, the letter quite categorically refers to negotiations for acquiring the property for “a consideration”. The letter would in fact show that according to the Plaintiff the Defendants had agreed to hand over vacant possession within six months. But that also has not fructified. It is in the advocate's notice that was addressed subsequently on 16th July, 2007 that prima facie, the case of the Plaintiff came to be improved upon, stating that there was an agreed price of Rs.2.10 Crores that was arrived at on 12th October, 2006. It is also of some significance that the Defendants while replying to the advocate's notice dated 16th July, 2007 on 10th October, 2007 denied that there was any such transaction as alleged and the cheque of Rs.21 lacs was sought to be returned. The Plaintiff in fact banked the aforesaid cheque and the explanation in paragraph 2 of the affidavit in support is that the accountant of the Plaintiff did so without obtaining the instructions of the Plaintiff. The cheque has been dishonoured on presentation. But that is a separate matter on which, I am of the view that, an equitable order would meet the ends of justice.

6. On evaluation of the material prima facie before the Court, an essential ingredient in a suit for specific performance is

missing viz. existence of an agreed consideration between the parties. The material would indicate prima facie at this stage that the matter still rested in the realm of negotiations and an agreed transaction reflecting the consideration payable by the parties and all the other terms was still to be arrived at. In these circumstances, it would not be in the interest of justice or in the considered exercise of the discretion of the Court to appoint a Receiver or for that matter to grant an injunction. Counsel appearing for the Defendants has fairly stated that the Defendants would deposit an amount of Rs.21 lacs together with interest at the rate of 18% from 12th October, 2006 computed on the aforesaid amount in this Court within a period of four weeks from today. The statement is accepted. The liability to refund this amount is not disputed before the Court. Hence, the Plaintiff would be at liberty, without prejudice to his rights and contentions in the suit, to withdraw the amount of Rs.21 lacs upon deposit. The amount deposited towards interest shall be invested by the Prothonotary and Senior Master in a fixed deposit of a nationalized bank to be renewed periodically during the pendency of the suit. The Notice of Motion is accordingly disposed of.